



of the Complaint and further deny that Mitchell Zivin is an "employer" within the meaning of the Fair Labor Standards Act (the "Act").

4. Responding to the allegations contained in Subpart 3 of Paragraph II of the Complaint, Defendants admit only that Wendy Zivin is the Vice President of Texas Quality Painting, Inc. Defendants deny the remaining allegations of Subpart 3 of Paragraph II of the Complaint and further deny that Wendy Zivin is an "employer" within the meaning of the Act.

5. Responding to the allegations contained in Subpart 4 of Paragraph II of the Complaint, Defendants admit that only that Trinidad Sanchez is the Director of Field Operations for Texas Quality Painting, Inc. Defendants deny the remaining allegations of Subpart 4 of Paragraph II of the Complaint and further deny that Trinidad Sanchez is an "employer" within the meaning of the Act.

6. Defendants deny the allegations contained in Paragraph III of the Complaint.

7. Defendants deny the allegations contained in the Paragraph IV of the Complaint.

8. Defendants deny the allegations contained in Paragraph V of the Complaint.

9. Defendants deny the allegations contained in Paragraph VI of the Complaint.

10. Defendants deny the allegations contained in Paragraph VII of the Complaint.

11. Defendants deny the allegations contained in Paragraph VIII of the Complaint.

12. Responding to Paragraph IX of the Complaint, including Subparts 1 through 5, Defendants admit that Plaintiff seeks the relief requested therein; however, Defendants deny that Plaintiff is entitled to any such relief under any federal, or any supplemental state theory. Defendants deny the remaining allegations, if any, contained in Paragraph IX of the Complaint.

13. Defendants generally deny all averments contained in the Complaint, except such designated averments as are either expressly admitted or otherwise qualified hereinabove.

**AFFIRMATIVE DEFENSES**

14. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

15. Defendants affirmatively assert that the persons to whom Plaintiff claims overtime compensation is due were hired as independent contractors rather than employees. Therefore, such persons are not entitled to overtime compensation under the Fair Labor Standards Act of 1938.

16. Defendants reserve the right to assert additional affirmative defenses and matters in avoidance as they may become apparent during the course of discovery in this case.

**DEMAND FOR JURY TRIAL**

Defendants request a trial by jury on all issues and claims on which a jury trial may be granted under federal and Texas law.

**WHEREFORE, PREMISES CONSIDERED,** Defendants respectfully request that Plaintiff's Complaint be dismissed in its entirety, that Plaintiff take nothing as a result of this action, and that Defendants be awarded their costs, attorneys' fees, and such other relief to which the Court determines they are justly entitled.

Respectfully submitted,

**WINSTEAD PC**  
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**ATTORNEYS FOR DEFENDANTS**  
**TEXAS QUALITY PAINTING, INC.,**  
**MITCHELL ZIVIN, WENDY ZIVIN AND**  
**TRINIDAD SANCHEZ**

**CERTIFICATE OF SERVICE**

I hereby certify that I have forwarded a true and correct copy of the above and foregoing instrument to counsel for Plaintiff, Mary Kathryn Cobb, UNITED STATES DEPARTMENT OF LABOR, 525 S. Griffin Street, Suite 501, Dallas, Texas 75202, via certified mail, return receipt requested, on this 19<sup>th</sup> day of June, 2007.

s/John D. Smart  
ONE OF COUNSEL

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